

**IN THE OFFICE OF THE STATE ENGINEER
OF THE STATE OF NEVADA**

IN THE MATTER OF APPLICATIONS 53987)
THROUGH 53992, INCLUSIVE, AND 54003)
THROUGH 54021, INCLUSIVE FILED TO)
APPROPRIATE THE UNDERGROUND)
WATERS OF SPRING VALLEY, CAVE)
VALLEY, DELAMAR VALLEY AND DRY)
LAKE VALLEY HYDROGRAPHIC BASINS)
(180, 181, 182 AND 184), LINCOLN COUNTY)
AND WHITE PINE COUNTY, NEVADA)

**SOUTHERN NEVADA WATER AUTHORITY’S OPPOSITION TO MILLARD
AND JUAB COUNTIES’ MOTION TO SUBSTITUTE A WITNESS**

The Southern Nevada Water Authority (“SNWA”) opposes the Motion to Substitute a Witness filed by Millard County, Utah, and Juab County, Utah (collectively, the “Counties”) on October 26, 2011. This response is filed pursuant to LCB File No. R129-08 sec. 2(6).

Pursuant to the State Engineer’s order, all parties were required to provide witness lists and reasonably detailed summaries of the testimony of each witness either during the initial evidentiary exchange (which concluded on July 1, 2011) or during the second evidentiary exchange (which concluded on August 26, 2011). Notice of Pre-Hearing Conf. & Hearing 4 (April 1, 2011). “If a witness is not identified as testifying on direct as to a certain topic, the witness may not be allowed to testify to the unidentified topic in his or her direct testimony.” Id.; *see also* Nev. Admin. Code § 533.230, *as amended by* LCB File No. R129-08 sec. 20 (eff. Feb. 11, 2009) (“If a party fails to comply with a prehearing order to identify a witness, the State Engineer may refuse to allow that witness to testify”). The witness lists and summaries were required to provide administrative efficiency and to protect the parties from the prejudice that would result from allowing un-disclosed witnesses and topics of testimony.

Despite the requirements and consequences provided in the State Engineer's order, the Counties are asking the State Engineer to allow Juab County resource specialist Glenn Greenhalgh to testify when the Counties present their case on October 31, 2011. The Counties did not disclose Greenhalgh during the initial evidence exchange or the second evidence exchange. The Counties did not exchange a summary of his testimony identifying the topic(s) of his testimony. Because the Counties failed to follow the State Engineer's order, the State Engineer should not allow Greenhalgh to testify.

Despite the State Engineer's order, the Counties argue that Greenhalgh should be allowed to testify as a "substitute" in place of Juab County Commissioner Chad Winn. The Counties present Greenhalgh as a full-time "resource specialist" who is "in a better position to advise the State Engineer" regarding "Juab County's interest in monitoring and preserving groundwater levels in Snake Valley from unreasonable draw-down due to pumping in Spring Valley, as well [as] protecting agricultural resources, grazing, vegetative, wildlife and air quality resources" Millard & Juab's Mot. 1-2.

SNWA will be prejudiced if Greenhalgh is allowed to testify because the testimony of a full-time resource specialist would be substantially different than the testimony of a publicly elected representative. Winn is a County Commissioner who was to testify regarding Juab County's "interest" in preserving groundwater levels and protecting resources. As a County Commissioner, that "interest" would have likely centered on political issues, community planning, interlocal relationships, and other local government concerns. Because Greenhalgh is not a County Commissioner, he would necessarily testify regarding Juab County's "interest" from a very different perspective. A "resource specialist" is a position with specialized knowledge regarding resources and a focus on statistical data and resource analysis. There is a

significant difference in experience and expertise between a County Commissioner and a full-time “resource specialist” which makes it inconceivable that Greenhalgh and Winn would provide the same level of detail and analysis in their testimony. If Greenhalgh were allowed to testify, SNWA would be prejudiced because it has not been given an opportunity to prepare to rebut this new scope of testimony. The prejudice to SNWA would be compounded by the fact that the Counties’ motion to substitute has been filed just two business day before the Counties are scheduled to present their case. SNWA does not have sufficient time to prepare to rebut this witness and the new scope of testimony.

SNWA would also be deprived of an opportunity to present evidence during its case. SNWA identified rebuttal witnesses and prepared rebuttal reports when the protestants identified a witness that might require it. For example, GBWN_076 identified Karen Rajala who is the Department Head of the White Pine County Economic Diversification Council. In response, SNWA identified Rick Holmes as a rebuttal witness and he presented testimony and a report in anticipation of Rajala’s testimony. SNWA would not have done that if GBWN had identified a White Pine County Commissioner to testify instead of Rajala. In the same way, if SNWA had known that a Juab County “resource specialist” was going to testify, it would have identified a rebuttal witness and prepared exhibits in response. SNWA did not do this because the Counties identified a county commissioner to testify instead.

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For the foregoing reasons, SNWA asks the State Engineer to deny the Motion to Substitute a Witness.

Respectfully submitted this 27th day of October, 2011.

By: 

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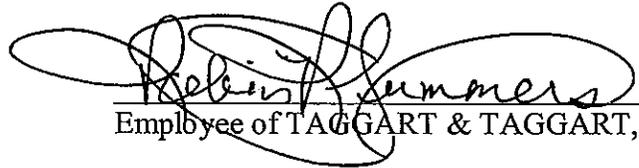
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CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of October 2011, a true and correct copy of SOUTHERN NEVADA WATER AUTHORITY'S OPPOSITION TO MILLARD AND JUAB COUNTIES' MOTION TO SUBSTITUTE A WITNESS was hand delivered to the Hearing Officer, served on all counsel of record via e-mail, and delivered via Fed Ex overnight delivery to counsel for Millard and Juab Counties at the following address:

J. Mark Ward
Utah Association of Counties
5397 Vine Street
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DATED this 27th day of October, 2011.



Employee of TAGGART & TAGGART, LTD.